

## IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 09-0605  
\_\_\_\_\_

FILED

FEB - 3 2010

STATE OF MONTANA,

Plaintiff and Appellee,

v.

DONNIE MACK SELLERS,

Defendant and Appellant.  
\_\_\_\_\_*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

ORDER

Appellant Donnie Mack Sellers has filed a petition to remove the Office of the Appellate Defender (OAD) as his counsel on appeal. Attorney Colin M. Stephens has appeared for the limited purpose of representing Sellers on his petition to remove the OAD. The OAD previously filed a notice indicating it was assisting Sellers in obtaining independent counsel for this purpose.

Sellers contends that the OAD has a conflict of interest because he wants to raise an ineffective assistance of counsel claim against his trial counsel, who is employed with the Office of the State Public Defender (OSPD). Stephens has filed a briefed petition asking this Court to adopt a per se rule which would remove the OAD from all appeals involving ineffective assistance of counsel claims against the OSPD.

Stephens' pleading indicates that the State of Montana was contacted and objected to removal of the OAD. However, the State has not filed a brief setting forth its legal position. Although the OAD is aware of Sellers' position generally, we note that Stephens' pleading

was not served upon the OAD, according to the certificate of service. We deem it appropriate to obtain briefing from the OAD setting forth its legal position on Sellers' petition for removal.

On February 2, 2010, the Clerk of this Court, pursuant to M.R.App.P. 26(1), granted Sellers an extension of time until March 10 in which to file his appellant's brief. We deem it appropriate to stay the briefing process on the merits of Sellers' appeal until his petition for removal of counsel is resolved. Therefore,

IT IS HEREBY ORDERED that the Office of Appellate Defender is granted twenty (20) days in which to file a response to the petition for removal of counsel.

IT IS FURTHER ORDERED that briefing of the merits of the appeal is hereby stayed pending further order of the Court.

The Clerk is directed to mail a true copy hereof to the counsel of record.

DATED this \_\_\_\_ day of February, 2010.

---

For the Court